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REMARKS

Claims 1-50 are currently pending in the subject application and are presently under consideration. Claims 8, 23, 35 and 46 have been amended to further emphasize novel aspects of applicant's claimed invention, claims 1-7, 9-16, 18-22, 25-28, 33, 37-39 and 44 have been amended herein to cure minor informalities, and claims 17, 32 and 43 have been cancelled herein. Applicant's representative notes that the aforementioned amendments do not necessitate a new search or any undue effort by the Examiner as they do not present new claimed subject matter. Accordingly, entry and consideration of these amendments is requested. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 1-34 and 46-50 Under 35 U.S.C. §101

Claims 1-34 and 46-50 stand rejected under 35 U.S.C. §101 because the claimed invention is allegedly directed to non-statutory subject matter. This rejection should be withdrawn for at least the following reasons. Claims 1, 8, 23 and 46 have been amended herein to overcome the subject rejection. Accordingly, withdrawal of this rejection with respect to independent claims 1, 8, 23 and 46 (and associated dependent claims) is requested.

It should be noted however, that while applicant's representative has amended independent claims 1, 8 and 46 to expedite fruitful prosecution of applicant's claimed invention, it is nevertheless believed that the rejection under 35 U.S.C. §101 of these particular claims is erroneous in view of the recent Federal Circuit opinion in *Eolas Techs., Inc. v. Microsoft Corp.*, 399 F.3d 1325 (Fed. Cir. 2005), wherein the court stated:

Title 35, section 101, explains that an invention includes "any new and useful process, machine, manufacture or composition of matter." ... Without question, *software code alone qualifies as an invention eligible for patenting under these categories*, at least as processes. *Id.* at 1338 (emphasis added).

Claims 1, 8 and 46, as the Examiner highlights and concedes, clearly pertain to software code comprising a "software component" ... implemented entirely in software." (See Office Action dated August 19, 2005, page 3). Consequently, it is applicant's

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representative's contention that claims 1, 8 and 46, as originally presented, fall squarely within the purview of *Eolas* and thus are eligible for patenting under 35 U.S.C. §101 and that the rejection of these particular claims therefore is errant.

II. Rejection of Claim 1 Under 35 U.S.C. §103(a)

Claim 1 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* (US 6,687,729). Withdrawal of this rejection is requested for at least the following reasons. Sievert *et al.* does not teach or suggest all limitations set forth in the subject claim.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) *must teach or suggest all the claim limitations*. See MPEP §706.02(j). The *teaching or suggestion to make the claimed combination* and the reasonable expectation of success *must be found in the prior art and not based on the Applicant's disclosure*. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).

Applicant's claimed invention relates to methods and systems that implement a client side HTTP stack in a computer system. To this end independent claim 1 recites: *a client side state machine associated with the at least one request*. Sievert *et al.* does not teach or suggest this aspect of the invention as claimed.

Sievert *et al.* relates to managing a pool of threads for executing queued items of work. The Examiner maintains that the salient feature of applicant's claimed invention can be found at col. 3, lines 34-65. Applicant's representative avers to the contrary. The noted passage provides a single work queue that can be in one of three states: stopped, suspended and running. The invention as claimed in contrast provides a client side state machine that is associated with every client side request received from a client

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application component. The clear difference between the invention as claimed and the cited document lies in the fact that applicant's claimed invention associates a state machine to all client requests received from a client application, whereas the cited document merely associates a solitary state machine to the work queue such that the work queue can be in one of the three states enumerated above. Thus, it is evident that the state machine disclosed in the cited document is only associated with one work queue **not** with each client side request that emanates from a client application. It is thus submitted that Sievert *et al.* and the invention as claimed are patentably distinct, and accordingly that the rejection of claim 1 should be withdrawn.

III. Rejection of Claim 2 Under 35 U.S.C. §103(a)

Claim 2 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of Jones *et al.* (US 6,003,061). This rejection should be withdrawn for at least the following reasons. Claim 2 depends from independent claim 1, and for reasons stated *supra*, Jones *et al.* fails to cure the deficiencies inherent in Sievert *et al.* Accordingly, this rejection should be withdrawn.

IV. Rejection of Claim 3 Under 35 U.S.C. §103(a)

Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of Okano *et al.* (US 6,725,253). Withdrawal of this rejection is requested for at least the following reasons. Claim 3 depends from independent claim 1, and Okano *et al.* fails to make up for the aforementioned deficiencies with respect to Sievert *et al.* with respect to claim 1. Accordingly, withdrawal of this rejection is requested.

V. Rejection of Claim 4 Under 35 U.S.C. §103(a)

Claim 4 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of Paxhia *et al.* (US 6,493,749). This rejection should be withdrawn for at least the following reasons. Claim 4, depends from independent claim 1; and Paxhia *et al.* does not rectify the above deficiencies with respect to Sievert *et al.* Withdrawal of this rejection is therefore requested.

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VI. Rejection of Claim 5 Under 35 U.S.C. §103(a)

Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of Paxhia *et al.*, as applied to claim 4 above, and further in view of Jones *et al.* Withdrawal of this rejection is requested for at least the following reasons. This rejection should be withdrawn in light of the fact that claim 5 depends from independent claim 1; and Paxhia *et al.* and Jones *et al.* fail to make up for the aforementioned deficiencies presented in Sievert *et al.* Accordingly, this rejection should be withdrawn.

VII. Rejection of Claim 6 Under 35 U.S.C. §103(a)

Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of Paxhia *et al.* in view of Jones *et al.* as applied to claim 5 above, and further in view of Okano *et al.* This rejection should be withdrawn for at least the following reasons. Claim 6 depends from independent claim 1, and Paxhia *et al.*, Jones *et al.* and Okano *et al.*, alone or in combination, fail to cure the aforementioned deficiencies with respect to Sievert *et al.* Accordingly, withdrawal of this rejection is requested.

VIII. Rejection of Claim 7 Under 35 U.S.C. §103(a)

Claim 7 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of Paxhia *et al.* as applied to claim 4 above, and further in view of Okano *et al.* Withdrawal of this rejection is requested for at least the following reasons. Claim 7 depends from independent claim 1, and Paxhia *et al.* and Okano *et al.* fail to cure the aforementioned deficiencies presented by Sievert *et al.* Accordingly, this rejection should be withdrawn.

IX. Rejection of Claims 8, 23, 35 and 46 Under 35 U.S.C. §103(a)

Claims 8, 23, 35 and 46 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin ("Control of Dynamic Threads Pool for Concurrent Remote Procedure Calls"). This rejection should be withdrawn for at least the following reasons. The IBM Technical Disclosure Bulletin fails to teach or

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suggest each and every aspect set forth in the subject claims.

Independent claims 8, 23, 35 and 46, as amended, recite similar limitations, namely: *a state machine associated with each of the M requests*. It is apparent that applicant's claimed invention includes a thread pool that comprises N threads that process M requests from a client application component, wherein each of the M requests that are received from the client application component are assigned an individual state machine. The IBM Technical Disclosure Bulletin fails to teach or suggest this novel aspect of the invention as claimed.

The IBM Technical Disclosure Bulletin discloses an algorithm that controls the creation and destruction of executor threads of an application server, wherein the algorithm creates only a fraction of the threads requested by the application server at initialization time and varies the number of threads when the load on the server changes. The cited document makes no mention whatsoever of associating a state machine with each of the M requests that are received from a client application component as recited in the subject claims. Accordingly, withdrawal of this rejection with respect to independent claims 8, 23, 35 and 46 (and claims that depend there from) is requested.

X. Rejection of Claims 9-13, 17-19, 24-28, 32-34, 36-39 and 47 Under 35 U.S.C. §103(a)

Claims 9-13, 17-19, 24-28, 32-34, 36-39 and 47 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Sievert *et al.* Withdrawal of this rejection is requested for at least the following reasons. Claim 9-13, 17-19, 24-28, 32-34, 36-39 and 47 depend from independent claims 8, 23, 35 and 46 respectively, and Sievert *et al.* fails to make up for the aforementioned deficiencies of the IBM Technical Disclosure Bulletin. Accordingly, this rejection should be withdrawn.

XI. Rejection of Claims 14, 29, 40 and 48 Under 35 U.S.C. §103(a)

Claims 14, 29, 40 and 48 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Sievert *et al.* as applied to claims 13, 28, 39, and 47 above respectively, and further in view of Jones *et al.*

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This rejection should be withdrawn for at least the following reasons. Claims 14, 29, 40 and 48 depend from independent claims 8, 23, 35 and 46 respectively, and the combination of Sievert *et al.* and Jones *et al.* do not make up for the aforementioned deficiencies with respect to the IBM Technical Disclosure Bulletin. Accordingly, withdrawal of this rejection is requested.

XII. Rejection of Claims 15, 30 and 41 Under 35 U.S.C. §103(a)

Claims 15, 30, and 41 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Sievert *et al.* in view of Jones *et al.* as applied to claims 14, 29 and 40 above respectively, and further in view of Okano *et al.* Withdrawal of this rejection is requested for at least the following reasons. Claims 15, 30 and 41 depend from independent claims 8, 23 and 35 respectively, and Sievert *et al.*, Jones *et al.* and Okano *et al.*, either alone or in combination, fail to rectify the deficiencies present in the IBM Technical Disclosure Bulletin. Accordingly, this rejection should be withdrawn.

XIII. Rejection of Claims 16, 31 and 42-45 Under 35 U.S.C. §103(a)

Claims 16, 31 and 42-45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Sievert *et al.* in view of Jones *et al.* in view of Okano *et al.* as applied to claims 15, 30 and 41 above respectively, and further in view of Paxhia *et al.* This rejection should be withdrawn for at least the following reasons. Claims 16, 31 and 42-45 depend from independent claims 8, 23 and 35, and Sievert *et al.*, Jones *et al.* and Okano *et al.* fail to make up for the deficiencies presented by the IBM Technical Disclosure Bulletin. Accordingly, this rejection should be withdrawn.

XIV. Rejection of Claim 20 Under 35 U.S.C. §103(a)

Claim 20 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Jones *et al.* This rejection should be withdrawn for at least the following reasons. Claim 20 depends from independent claim 8, and Jones *et al.* does not make up for the deficiencies identified above with respect to

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the IBM Technical Disclosure Bulletin. Accordingly, withdrawal of this rejection is requested.

XV. Rejection of Claim 21 Under 35 U.S.C. §103(a)

Claim 21 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Okano *et al.* Withdrawal of the rejection is requested for at least the following reasons. Claim 21 depends from independent claim 8, and Okano *et al.* fails to rectify the deficiencies presented in the IBM Technical Disclosure Bulletin. Accordingly, this rejection should be withdrawn.

XVI. Rejection of Claim 22 Under 35 U.S.C. §103(a)

Claim 22 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Paxhia *et al.* This rejection should be withdrawn for at least the following reasons. Claim 22 depends from independent claim 8, and Paxhia *et al.* fails to rectify the aforementioned deficiencies with respect to the IBM Technical Disclosure Bulletin. Accordingly, withdrawal of this rejection is respectfully requested.

XVII. Rejection of Claim 49 Under 35 U.S.C. §103(a)

Claim 49 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Sievert *et al.* as applied to claim 47 above, and further in view of Okano *et al.* Withdrawal of this rejection is requested for at least the following reasons. Claim 49 depends from independent claim 46, and the combination of Sievert *et al.* and Okano *et al.* fails to rectify the aforementioned deficiencies presented in the IBM Technical Disclosure Bulletin. Accordingly, this rejection should be withdrawn.

XVIII. Rejection of Claim 50 Under 35 U.S.C. §103(a)

Claim 50 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Sievert *et al.* as applied to claim 47 above, and further in view of Paxhia *et al.* This rejection should be withdrawn for at least the

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following reasons. Claim 50 depends from independent claim 46, and the aforementioned deficiencies identified with respect to the IBM Technical Disclosure Bulleting are not rectified by the combination of Sievert *et al.* and Paxhia *et al.* Accordingly, withdrawal of this rejection is respectfully requested.

CONCLUSION


The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP170US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

AMIN & TUROCY, LLP



Jeffrey R. Sadlowski
Reg. No. 47,914

AMIN & TUROCY, LLP
24TH Floor, National City Center
1900 E. 9TH Street
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731